

FCC MAIL SECTION

Federal Communications Commission

DA 99-2379

OCT 5 3 47 PM '99

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

DISPATCHED BY

Interexchange Carrier End-User Charges  
To Recover Universal Service ContributionsAT&T Tariff FCC Nos. 13 and 27  
Transmittal No. 11460)  
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CC Docket No. 99-324

**Suspension Order**

Adopted: October 29, 1999

Released: November 1, 1999

By the Chief, Competitive Pricing Division:

**I. Introduction**

1. In this Suspension Order, we suspend and set for investigation the tariff revisions, which AT&T filed October 29, 1999, in Transmittal No. 11460, that propose an approximately fifty percent increase in the Universal Connectivity Charge that AT&T assesses on its residential end users. The revisions would raise the residential Universal Connectivity Charge to \$1.50 from \$0.99. The Universal Connectivity Charge purportedly recovers AT&T's contributions to the Universal Service Fund.

**II. Discussion**

2. In the *Universal Service Report and Order*, the Commission stated that "carriers will be permitted, but not required, to pass through their contributions to their interstate access and interexchange customers."<sup>1</sup> The Commission also stated in that order, however, that "if some carriers (e.g., IXC's) decide to recover their contribution costs from their customers, the carriers may not shift more than an equitable share of their contributions to any customer or group of customers."<sup>2</sup> Moreover, although the Commission declined in the *Truth and Billing Order* to adopt a rule "restricting a carrier from charging a line item assessment in an amount greater than the carrier's universal service assessment rate," the Commission cautioned that it would "not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges."<sup>3</sup> We also note that the Commission has recently initiated a *Notice of Inquiry* regarding certain fees that interexchange carriers assess on their end users, including fees purportedly designed to recover the costs of their

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<sup>1</sup>In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776, 9199 (1997).

<sup>2</sup>*Id.*

<sup>3</sup>In re Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Propose Rulemaking, 14 FCC Rcd. 7492, 7528 (1999).

contributions to the Universal Service Fund.<sup>4</sup>

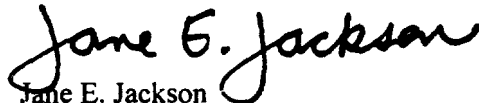
3. We find that a full, five-month statutory suspension is warranted pending investigation of these tariff revisions pursuant to section 204 of the Communications Act of 1934, as amended.<sup>5</sup> In light of the Commission's prior statements and rulings, discussed above, we find: (1) that a high probability exists that the increased rate AT&T proposes in Transmittal No. 11460 will be found unlawful after investigation; (2) that the harm that could result from these revisions is more substantial than any injury to the public that might result from the suspension; (3) that irreparable injury will result absent suspension because without such suspension the Commission would be unable to require AT&T to reimburse the public if the revisions are eventually found unlawful, and (4) that the suspension is not otherwise contrary to the public interest.<sup>6</sup> Therefore, we suspend pending completion of the investigation the revisions that propose to increase the Universal Connectivity Charge for residential end users.

### III. Ordering Clauses

4. IT IS ORDERED that, upon adoption of this order, pursuant to sections 4(i), 201(b), and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201(b) and 204(a), and sections 0.91, 0.291, and 1.773 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, and 1.773, the revisions to the residential Universal Connectivity Charge described in AT&T Transmittal No. 11460 ARE SUSPENDED for five months from the effective date and an investigation IS INSTITUTED.

5. IT IS FURTHER ORDERED that AT&T SHALL FILE a supplement reflecting the suspension no later than 5 business days after release of this Suspension Order. AT&T should cite the "DA" number of this Suspension Order as its authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION



Jane E. Jackson  
Chief, Competitive Pricing Division  
Common Carrier Bureau

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<sup>4</sup>See *In re Low-Volume Long-Distance Users*, CC Docket No. 99-249, Notice of Inquiry, FCC 99-168 (July 7, 1999).

<sup>5</sup>See 47 U.S.C. § 204(a)(1).

<sup>6</sup>Cf. 47 C.F.R. § 1.773(a)(1)(ii)

## DISSENTING STATEMENT OF COMMISSIONER FURCHTGOTT-ROTH

Re: *Interexchange Carrier End-User Charges To Recover Universal Service Contributions, AT&T Tariff FCC Nos. 13 and 27 Transmittal No. 11460, CC Docket No. 99-324.*

The Common Carrier Bureau has suspended for five months a tariff filed by AT&T on October 29, 1999, effectively preventing AT&T from putting into effect a \$0.51 per-customer monthly price increase. I believe that the Bureau's suspension of AT&T's tariff is patently illegal, and I object to its action. It is nothing more than a transparent effort by the Commission to hide from the American consumer the costly – and possibly unlawful – increases in the FCC's universal service programs.

Currently, AT&T includes in its monthly bills a \$0.99 line charge, in which AT&T passes along to its customers the amount that the Commission requires AT&T to contribute to federal universal service programs. These programs historically were targeted at support for high-cost telecommunications services in rural America, but in the past three years the programs have shifted the majority of funding to support the funding equipment and services for schools and libraries and for low-income households.

The Commission has recently taken two actions that will substantially increase the size of AT&T's compulsory universal service contributions. *First*, implementing a decision from the United States Court of Appeals for the Fifth Circuit, the Commission has ruled that universal service contributions may not be assessed on a telecommunications carrier's intrastate revenues. As a result of this decision, carriers with relatively high interstate revenues, including long-distance carriers such as AT&T, will be required to contribute more to the fund. *Second*, the Commission adopted on October 21, 1999, two orders that will increase the amount of universal service funding that will be distributed to large telephone companies that serve rural areas. Again, to implement this decision, long-distance carriers will be expected to contribute more to the universal service fund. AT&T has determined that its per-customer charge will increase \$0.51 per month as a result of these rulings.

For at least two independent reasons, the Common Carrier Bureau's action is unlawful. As an initial matter, if any suspension of A&T's tariff were appropriate (which it is not), it is the *Commission* – rather than the Bureau – that has the power to make that decision. Under our rules, the Commission has delegated authority to the Bureau to act only on those routine matters that do not require resolution of novel questions of fact, law, or policy. Specifically, our rules state that the Bureau has no “authority to act on any applications or requests which present *novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.*” See 47 C.F.R. § 0.291(a)(2). The Commission has only once before, nearly eight years ago and in utterly different circumstances, rejected a tariff for a nondominant carrier. See Memorandum Opinion and Order, *Capital Network Systems*, 7 FCC Rcd 8092 (1992). Therefore, whether a suspension of AT&T's tariff is appropriate here is plainly a novel question of fact, law, and policy. And without Commission precedent on the issue, the Bureau simply has no authority to take the action it has.

In addition, there has been no showing whatsoever that the legal standard applicable to the suspension of a non-dominant carrier's tariff has been met. Under our rules, tariff filings by nondominant carriers are considered *prima facie* lawful and will not be suspended by the Commission unless four factors have been established. See 47 C.F.R. § 1.773(a)(ii). A party seeking suspension must show that: (1) there is a high probability that the tariff would be found unlawful after investigation; (2) the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing; (3) irreparable injury will result if the tariff filing is not suspended; and (4) the suspension would not otherwise be contrary to the public interest.

The Bureau does nothing more than recite the standard set forth in our rules and has not even attempted to satisfy this four-part test. And it could not. It is not unlawful for AT&T to attempt to recover from its customers the contributions that the Commission has required it to make. To the extent the Bureau believes that AT&T's charges are "too high," that is a decision for consumers, not the Bureau. As the Commission repeatedly has recognized, the market for long-distance is a competitive one. If AT&T attempts to pass along to consumers inappropriately high universal service charges, consumers have the choice to switch to other carriers. Yet other carriers also face these new universal service charges, and in a competitive market, all taxes, fees, and charges are ultimately passed along to consumers, no matter what federal bureaucracies may hope. Nor does the Bureau even pretend to demonstrate that "harm . . . to competition" or "irreparable injury" will result if the tariff filing is not suspended.

What is driving the Bureau's decision is quite clear. It has recently taken actions that will substantially increase the size of social programs under universal service, and these increases will have the politically unpopular effect of substantially increasing the contributions that consumers must make to subsidize these programs. The Bureau cannot lawfully have it both ways: it should either cut its social programs, or the public should know that they are subsidizing these programs in the payments they make to long-distance companies. At bottom, the Bureau's suspension of AT&T's tariff reflects its illegitimate desire to keep from consumers information about exactly how much this agency's programs cost the public.